



21/06/10

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX
HYDERABAD II COMMISSIONERATE
3RD FLOOR (Annexe) :: SHAKKAR BHAWAN :: L.B. STADIUM ROAD
BASHEERBAGH::HYDERBAD – 500 004

O.R.No. 82/2010-ST
HQST No: 58/09 - AE IV

Date: 16.06.2010

SHOW CAUSE NOTICE

Sub : Service Tax – Works Contract Services – M/s. Alpine Estates - Non payment of Service tax on taxable services rendered – Show cause Notice – Reg.

M/s. Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003 [here in after referred to as 'the service provider'] are engaged in providing works contract service. M/s. Alpine Estates is a registered partnership firm and got themselves registered with department on 29-2-2008 for payment of service tax with STCNo. AANFA5250FST001.

2. As per Section 65(105)(zzzza) of the Finance Act, 1994 "**taxable service**" under works contract means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.—For the purposes of this sub-clause, "works contract" means a contract wherein,—

- (i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) Such contract is for the purposes of carrying out,—
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
 - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
 - (c) construction of a new residential complex or a part thereof; or
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

3. As per Section 65(91a) of the Finance Act, 1994, "Residential Complex means any complex comprising of –

- (i) a building or buildings, having more than twelve residential units
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

located within the premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

4. On gathering intelligence that M/s. Alpine Estates though registered with the service tax department are not discharging the service tax liability properly and also not filing the required returns, investigation has been taken up by the department and Summons dated 13.1.2010 for submission of relevant record /documents / information have been issued to them. On verification of records

submitted by the assessee, it is found that M/s. Alpine Estates have undertaken a single venture by name **May Flower Heights** located at PNo. 3-3-27/1, Mallapur Old village, Uppal Mandal, RR District, and received amounts from customers from May, 2007 to December 2009 towards sale of apartment along with undivided portion of land and agreement for construction. In the said venture, in respect of 102 apartments they have entered into sale deed and agreement for construction with their customers. Till March 2010 they have not filed the ST3 returns with the department. However, they have submitted the copies of the ST3 returns prepared for the periods October, 2007 to March 2008, April, 2008 to September, 2008 which were not acknowledged by the department, along with the copies of the challans consisting of payments of Rs. 51, 05, 147/- including Rs. 22,910/- other receipts. It is found that in respect of 102 houses they have entered into sale deed and agreements for construction from May, 2007 to December, 2009. They paid service tax of Rs. 50,82,237/- on receipts against said agreements of construction for the period from May, 2007 to December, 2008 under Works Contract service, availing the option under Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. It is found that they have stopped payment of Service Tax on receipts from 1-1-2009 by misinterpreting the clarification of the Board vide circular No. 108/02/2009 – ST dated 29th January 2009.

5. A Statement has been recorded from Sri. A. Shanker Reddy, Deputy General Manager (Admn.) authorized representative of M/s. Alpine Estates on 1.2.2010 under Section 14 of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994. Sri. Reddy vide his Statement dated 1.2.2010 had inter alia stated that “the activities undertaken by the company are providing services of construction of Residential Complexes. They purchased the land under sale deed. On that they constructed the residential complexes. Initially, they collect the amounts against booking form/agreement of sale. At the time of registration of the property, the amount received till then will be allocated towards Sale Deed and Agreement of construction. Therefore, service tax on amounts received against Agreement of construction portion up to registration was remitted immediately after the date of agreement. The service tax on remaining portion of the amounts towards Agreement of construction is paid on receipt basis. Agreement of sale constitutes the total amount of the land / semi finished flat with undivided share of land and the value of construction. The sale deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way of sale of the constructed unit as per the agreement of sale but possession was given in two phases one is land / semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks”. Further, he stated that services to a residential unit / complex which is a part of a residential complex, falls under the exclusion clause in the definition of residential complex. Further, he stated that they have stopped collection and payment of service from 1-1-2009 in the light of the clarification of the Board vide circular No. 108/02/2009 – ST dated 29th January 2009.

6. As per the exclusion provided in Sec 65(91a) of the Service Tax Act, the residential complex does not include a **complex** which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Here, “personal use” includes permitting the complex for use as residence by another person on rent or without consideration. *It is further clarified in para 3 of the Circular No. 108/02/2009 – ST, dated 29th January 2009* if the ultimate owner enters into a contract for construction of a **residential complex** with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/promoter/developer constructing entire complex for one person for personal use as residence by such person would not be subjected to service tax. For example, construction of residential quarters by the Income tax department for their employees by employing a contractor for design, planning and construction is not leviable to service tax because it is for the personal use of the Income tax department. Normally, a builder/promoter/developer constructs residential complex consisting number of residential units and sells those units to different customers. So, in such cases the construction of complex is not meant for one individual entity. Therefore, as the whole complex is not constructed for single person the exclusion provided in Sec 65(91a) of the Service Tax Act doesn't apply. Further, the builder/promoter/developer normally enters into construction / completion agreements after execution of sale deed. Till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self services. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore there is no levy of Service Tax on

the services rendered till sale deed i.e., on the value consideration shown in the sale deed. But, no stamp duty will be paid on the agreements / contracts against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction are invariably attracts service tax under Section 65(105(zzzza)) of the Finance Act, 1994.

7. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act, 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s. Alpine Estates qualifies to be a residential complex as it contains more than 12 residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA vide permit No. 14013/p4/plg/H/2006, dated 23-3-2007. As seen from the records submitted, the assessee have entered into 1) a sale deed for sale of apartment along with undivided portion of land and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assessee thereafter to their customers under agreement for construction are taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods, it appears that the services rendered by them after execution of sale deed against agreements for construction are taxable services under works contract service.

8. As M/s. Alpine Estates have not furnished the monthwise particulars of amounts received exclusively on agreements for Construction, the tax liability has been arrived at on the basis of soft copies of the books of accounts provided by M/s. Alpine Estates. It is arrived at that they have collected an amount of **Rs. 7,54,94,586/-** against agreements of construction during the period from January 2009 to December 2009 and are liable to pay service tax including Education cess and Secondary & Higher education cess of Rs. 31,10,377/- and the interest at appropriate rates under works contract service respectively. The details of amounts collected, service tax liability are as detailed in the **Annexure** to this Notice.

9. M/s. Alpine Estates are well aware of the provisions and of liability of Service tax on receipts as a result of these agreements for Construction and have not assessed and paid service tax properly by suppression of facts and contravened the provisions of Section 68 of the Finance Act, 1994 with an intention to evade payment of tax. They have intentionally not filed the returns and produced the particulars. Further, they misinterpreted the definition of the works contract service with an intention to evade payment of Service Tax. All the facts have come to light only after the department has taken up the investigation. Hence, the service tax payable by M/s. Alpine Estates appears to be recoverable under **Sub Section (1) of Section 73 of the Finance Act, 1994.**

10. From the foregoing it appears that M/s. Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 have contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have not paid the appropriate amount of service tax on the value of taxable services and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have not filed statutory Returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details / information, with an intent to evade payment of service tax and are liable for recovery under proviso to the section 73(1) of the Finance Act, 1994 and thereby have rendered themselves liable for penal action under Section 76, 77 and 78 of the Finance Act, 1994

11. Therefore, M/s. Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003, are hereby required to show cause to the Additional Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, 3rd floor, Shakkar Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad-500 004, within 30 days of receipt of this Notice as to why:

- (i) an amount of **Rs. 30,19,783/-** towards Service tax, **Rs. 60,396/-** towards Education Cess and **Rs. 30,198/-** towards Secondary & Higher Education Cess (a total amount of **Rs. 31,10,377/-**) should not be demanded on the works contract service under the Sub Section (1) of the Section 73 of the Finance Act, 1994 for the period from January 2009 to December 2009 as shown in the Annexure attached to the Notice.

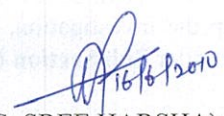
- (ii) interest is not payable by them on the amount demanded at (i) above and also on the delayed payments made during the period from January, 2009 to December 2009, under the Section 75 of the Finance Act, 1994
- (iii) Penalty should not be imposed on them under Section 76 of the Finance Act, 1994 for their failure to pay service tax in accordance with the provisions of Section 68 or the rules made under Chapter V of the Finance Act 1994.
- (iv) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994 for the contravention of Rules and provisions of the Finance Act, 1994 for which no penalty is specified else where.
- (v) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 for suppression of value of service tax and contravention of provisions of Chapter V of the Finance Act or the rules made there under, with intent to evade payment of service tax.

12. They are also required to produce at the time of showing cause, all the evidence upon which they intend to rely in support of their defense. They are also required to state whether would like to avail of opportunity to be heard in person before the case is adjudicated. If they do not reply to the Show Cause Notice within 30 days or do not appear in person when the case is posted for personal hearing, it would be presumed that the Notice does not have anything to state in their defense or they do not prefer any personal hearing and case will be decided on merit based on the evidence available on record.

13. This show cause Notice is issued without any prejudice to any other action that may be taken against the recipients of this Notice or any other persons concerned with the Finance Act or any other law time being in force.

14. The above Notice is issued placing Reliance on the following Records:

- (1) Soft copy of the bank statements, books of accounts, Customer documents 2008-09 and 2009-10 (upto Dec 2009).
- (2) copies of challans submitted by M/s. Alpine Estates .
- (3) The Statement dated 1-2-2010 of Sri. A. Shankar Reddy, Authorised person of M/s. Alpine Estates.
- (4) Balance Sheets of M/s. Alpine Estates for the year 2008-09.


(G. SREE HARSHA)

ADDITIONAL COMMISSIONER

✓ To

M/s. Alpine Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003

(By Speed Post Ack. Due)

Copy to:

The Superintendent, Service Tax, Group-X, Hyderabad-II Commissionerate, Shakkar Bhavan, Hyderabad.

The Superintendent, Adjudication, Hqrs, Hyderabad-II Commissionerate, Hyderabad.

Office Copy / Spare Copy.

ANNEXURE

Alpine Estates

S.No.	Month	Value	Rate of Duty	Tax payable
1	Jan-09	8522028	4.12%	351108
2	Feb-09	2148455	4.12%	88516
3	Mar-09	4237245	4.12%	174574
4	Apr-09	7966970	4.12%	328239
5	May-09	8392163	4.12%	345757
6	Jun-09	8259560	4.12%	340294
7	Jul-09	4574287	4.12%	188461
8	Aug-09	12279493	4.12%	505915
9	Sep-09	2822025	4.12%	116267
10	Oct-09	5785507	4.12%	238363
11	Nov-09	5342334	4.12%	240704
12	Dec-09	4664519	4.12%	192178
Total		75494586		3110377

Break up of the tax

Servcie Tax	Ed.Cess	S&HEd Cess
3019783	60396	30198

Handwritten signature
 (M. Janki Ram) *Handwritten*
 Insp ST AE 21